

The Flinn Report

Illinois

Regulation

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

PUBLIC UTILITIES

The ILLINOIS COMMERCE COMMISSION adopted a new Part titled "Voluntary Mediation Practice" (83 Ill Adm Code 201), effective 12/1/04, to implement Public Act 92-22 by providing for voluntary mediation of disputes between parties subject to the Commission's jurisdiction. Mediation may be requested prior to or after initiating a docket to resolve a contested matter. End-user customers with non-docketed contested matters whose disputes are subject to ICC jurisdiction may also request voluntary mediation after filing an informal complaint with ICC's consumer services division. Topics covered include definitions, mediator appointment, mediation procedures, record-keeping, and enforcement of settlement agreements. Small businesses desiring to mediate disputes through the Commission may be affected by this rulemaking.

Questions/requests for copies: Conrad S. Rubinkowski, ICC, 527 E. Capitol Ave., Springfield IL 62701-1827, 217/785-3922. Please reference docket 03-0708.

PROFESSIONAL LICENSURE

The DEPARTMENT OF FINANCIAL

AND PROFESSIONAL REGULATION, Division of Professional Regulation, adopted an amendment for rules titled "Optometric Practice Act of 1987" (68 Ill Adm Code 1320), effective 12/2/04, to provide that a licensed optometrist may qualify to use therapeutic ocular pharmaceutical agents for examination purposes in this State if he or she submits evidence of administering such drugs while practicing optometry in another jurisdiction for at least 10 years. This additional option requires the laws of that jurisdiction to be substantially equivalent to those of Illinois, and the applicant must show no related disciplinary action. Changes since 1st Notice to this rulemaking and the 4 that follow reflect the consolidation of the departments of Financial Institutions, Professional Regulation, and Insurance and the Office of Banks and Real Estate into separate divisions within the new Department of Financial and Professional Regulation. Optometrists seeking certification to use therapeutic ocular pharmaceutical agents may be affected by this rulemaking.

DFPR adopted amendments for rules titled "Professional Counselor and Clinical Professional Counselor Licensure Act" (68 Ill Adm Code 1375), effective

(cont'd next page)

Proposed Regulations


AIR POLLUTION

The POLLUTION CONTROL BOARD proposed amendments for "Definitions and General Provisions" (35 Ill Adm Code 211) and "Emissions Reduction Market System" (35 Ill Adm Code 205) in response to new federal air pollution standards that go into effect 6/15/05 and will affect ozone non-attainment areas in Chicago. PCB states that the new federal regulations change the applicability threshold for the Clean Air Act Permit Program (CAAPP) from those pollution sources with the potential to emit 25 tons of volatile organic material (VOM) per year to those that may emit 100 tons/year. Also, an 8-hour ozone national ambient air quality standard will replace the current 1-hour standard. Amendments to both Parts change references to the Chicago and East St. Louis "nonattainment area" for ozone by striking the word "nonattainment". However, the Part 205 amendments retain the current 25 tons/yr. VOM threshold for the Chicago area. The Illinois Environmental Protection Agency wants current emission reduction market system regulations (ERMS) to remain in place for Chicago when the new federal standards take effect. Part 205 also adds an explanation of current regulations for the federally enforceable state operating permits (FESOP) that are an alternative to the existing CAAPP permit. If a source chooses to operate under FESOP regulations rather than

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

tive 12/2/04, to clarify education, experience, and examination criteria for licensure. The rulemaking states that the requirement that clinical professional counselors include 18 hours of clinical supervision as part of their 30-hour continuing education (CE) requirement is a one-time (lifetime) requirement beginning with the 3/31/07 license renewals. In addition, the rulemaking strikes the limitation that a licensed “clinical” professional counselor must always operate and represent himself or herself as an employee of the practice and not as an independent contractor as defined by the Internal Revenue Service and clarifies that this provision applies only to licensed professional counselors. As originally introduced, the amendments specified that “one course” referred to 3 semester hours or the equivalent quarter hours. A change since 1st Notice sets the effective date for that definition as 1/1/08 in order for schools to modify any programs that may require it. Small businesses, small municipalities, and not-for-profit corporations that employ licensed professional counselors and licensed clinical professional counselors or that conduct CE for this profession are affected by this rulemaking.

DFPR also adopted amendments for rules titled “Illinois Physical Therapy Act” (68 Ill Adm Code 1340), effective 12/2/04, to update physical therapist (PT) and physical therapist assistant (PTA) curriculum requirements so that the rules accurately reflect accreditation requirements specified by the Commission on Accreditation in Physical Therapy Education (CAPTE) prior to 2002 and those since 1/1/02. Therapist graduates from outside the United States must be credentialed by a service with a physical therapist consultant on staff. Similar, but not identical, requirements are specified for PTAs. Also, a College Level Examination Program passing test score is acceptable for satisfying a coursework requirement. Licensure applicants by endorsement who were licensed in another state between 8/1/96 and 9/1/99 must have their curriculum reviewed and approved on an individual basis

by DFPR. Additional provisions add a restoration fee (\$30) for an inactive license, give continuing education (CE) credit for conference “platform” presentations and certain professional leadership or committee positions, and add institutions accredited by CAPTE as approved CE sponsors. Finally, the incorporation by reference of the profession’s “Code of Ethics” is updated from the 1991 to the 2000 edition. Changes since 1st Notice remove proposed text that allowed DFPR’s Physical Therapy Licensing and Disciplinary Committee to review a non-U.S. trained licensure applicant’s qualifications even after being credentialed by an approved service and provide that up to 5 hours of CE credit may be earned by being a clinical instructor for either PT or PTA students. Those providing physical therapy services will be affected by this rulemaking.

DFPR repealed rules titled “Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993” (68 Ill Adm Code 1240) and replaced them with a new Part titled “Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004”, effective 12/2/04, with the same Part number to implement Public Act 93-438. Although much of the text of the Part remains the same (including applicable fees), the new Part represents a comprehensive rewrite and restructuring of the regulations. Each of 5 disciplines (private detective, private alarm company, private security firm, locksmith, and proprietary security force) are separated into distinct subparts listing the application criteria for the various licenses and procedures for obtaining a permanent employee registration card (PERC). The rulemaking provides definitions, basic training and firearm training requirements, training program and instructor criteria, and application procedures for the firearm authorization card. Persons who have no access to confidential or discipline-specific information nor provide discipline-specific services, peace officers, and employees located and doing work outside of Illinois are exempt from

obtaining PERCs. Major changes between the proposed and repealed rulemakings include adding a definitions section, clarifying who needs to be registered as an employee, eliminating the required submission of photographs with applications, and requiring individuals who apply for restoration of a PERC that has expired for more than 1 year to undergo a new State and federal fingerprint check. The responsibilities of a “licensee-in-charge” include overseeing services, including employee recordkeeping, training activities, employee conduct, and contract review and approval. Unless a variance is granted, the licensee-in-charge must maintain all files subject to audit or inspection at a location within Illinois. The words “law enforcement” are prohibited from being used on any patch, badge, or other identification in order to avoid implying in any way that the person works for a governmental agency. An agency may not seek a temporary operational permit if the loss of the licensee-in-charge is due to Department-initiated disciplinary action related to the licensee’s conduct on behalf of the agency. Also, any individual whose application, license, or registration has been denied, suspended, or revoked may reapply after 1 year. A provision requiring non-lethal-force training for private alarm agency and private security agency employees is added. Private security employees are also required to complete 8 additional hours of on-the-job basic training and 8 hours each year of refresher training. A change in disciplinary provisions includes adding a new section allowing a licensee to opt for inactive status for up to 6 years. As originally proposed, a “licensee-in-charge” was required to be present 20 or more hours per week at the agency’s office or job site to meet the “participation in agency affairs” requirement. That stipulation has been removed since 1st Notice in response to public comments that the requirement may prevent the licensee from conducting his or her duties, especially in those instances where the firm has branches in several locations. In addition, the definition for “qualified

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instructor” was expanded to include: (1) registered employees with at least 5 years experience in the specific discipline being taught and who have been training for 3 of the last 5 years; (2) registered employees with at least 3 years supervisory experience in the training area; (3) higher education faculty members authorized to teach firearms or security training courses; and (4) registered employees with a baccalaureate degree in related fields or with at least 3 years experience as a corporate trainer or equivalent in another industry. Small businesses, small municipalities, and not-for-profit corporations that own or operate a private detective agency, private alarm company, private security firm, or locksmith company; maintain a proprietary security force; or provide training programs or basic programs for firearm instruction are affected by these 2 rulemakings.

Questions/requests for copies of the 5 DFPR rulemakings above: Barb Smith, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax 217/782-7645.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments for rules titled “Conditions of Employment” (80 Ill Adm Code 303), effective 12/3/04. Companion emergency amendments became effective 7/1/04 and expired 11/27/04. The rulemaking implements recent negotiations between the State and AFSCME by updating employee leaves-of-absence regulations. The changes include allowing a supervisor to grant employee requests to use personal leave in ½ hour increments after a minimum use of 1 hour, increasing female employees’ paid maternity leave from 3 to 4 weeks, increasing male employees’ paid paternity leave from 2 to 3 weeks, and increasing paid adoption leave from 2 to 3 weeks. Maternity and paternity leaves are limited to one leave per birth, and adoption leave remains at 1 leave/family/year. Employees with a job-connected injury or illness that re-

quires appointments with a doctor, dentist, or other health care professional are allowed, with a supervisor’s approval, to keep such appointments without losing pay or using earned sick leave. Also, if an employing agency feels that an employee who is permitted to return to work by a doctor following a disability leave is not able to perform his or her duties, the employer may request a duty fitness evaluation. The employer may rely upon the impartial physician’s decision as to the employee’s fitness for duty, and the employing agency must pay for such an examination. Regarding family responsibility leave, the rulemaking specifies that employees are not required to use any accumulated benefit time prior to taking such a leave. Also, the definition of “family” is broadened to include any relative or person living in the employee’s household for whom the employee has custodial responsibility or where such a person is financially or emotionally dependent upon the employee and where the presence of the employee is needed.

Questions/requests for copies: Gina Wilson (217/785-4510) or Jeff Shuck (217/782-5778), DCMS, 720 Stratton Bldg., Springfield IL 62706.

TAXES

The DEPARTMENT OF REVENUE adopted new Part titled “Gas Use Tax Law” (86 Ill Adm Code 471) and amendments for “Gas Revenue Tax Act” (86 Ill Adm Code 470), both effective 11/30/04, to implement Public Act 93-31, which creates the Gas Use Tax Law. In accordance with the statute, beginning 10/1/03, Part 471 imposes a tax on gas purchased from an out-of-state supplier and distributed into Illinois through a pipeline system at 2.4¢/therm or 5% of the purchase price for the billing period, whichever is the lower rate. The rulemaking defines terms, establishes procedures for registering as a self-assessing purchaser or a delivering supplier, and sets forth the tax collection and reporting obligations of delivering suppliers. Exemptions to the tax are

listed, and procedures for claiming such exemptions are provided. The Part 470 rulemaking, also beginning 10/1/03, eliminates the tax exemption for customers who acquired contractual rights to purchase out-of-state gas or gas services prior to 3/1/95. Further amendments provide that no gas revenue tax is imposed on transactions that incur a gas use tax liability on those same transactions, and transactions that are exempt from tax or incur no tax liability under the gas use tax law remain subject to gas revenue tax. Small businesses, small municipalities, and not-for-profit corporations that are involved in the supply or delivery of natural gas and those entities that purchase out-of-State gas are affected by these rulemakings.

Questions/requests for copies: Terry Charlton, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

VETERANS’ BENEFITS

The DEPARTMENT OF MILITARY AFFAIRS adopted emergency amendments for rules titled “Illinois Military Family Relief Fund Act” (95 Ill Adm Code 200), effective 12/7/04, for a maximum of 150 days. An identical proposed rulemaking appears in this issue of the Illinois Register. The rulemakings implement Public Act 93-976 by expanding grant benefits to single persons who are members of the Illinois National Guard or Illinois residents who are members of the U.S. Armed Forces Reserve and who have been called to active duty as a result of the 9/11/01 terrorist attacks. The rulemakings also transfer the responsibility for death grants from the DMA to the Department of Veterans’ Affairs and clarify what constitutes eligibility for casualty-based grants. The DMA must verify with the U.S. Department of Defense that the grant applicant sustained an injury from terrorist activity, sustained a combat or combat-related injury as a result of hostile action, or sustained an injury going to or from a combat mission that was directly related to hostile action. Ser-

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vice members wounded mistakenly or accidentally by friendly fire directed at what was believed to be a hostile force are also eligible for these grants. This change applies to applications for casualty-based grants awarded after 12/7/04. Additionally, the list of reasons for casualty-based grant ineligibility is expanded to include self-inflicted wounds; misconduct or willful negligence; members who are AWOL, deserters, or otherwise on "dropped-from-rolls" status; certain personnel serving in full-time unit support programs; and deceased members because monies are available from other State programs. The flat rate of a casualty-based grant is increased from \$1,000 to \$2,000 and is limited to one grant for injuries received during, or arising out of, the same engagement or incident. Currently, a grant may be awarded only once per active duty order. Regarding family need-based grants, the eligible top pay grade for a warrant officer is raised from W-2 to W-3, and text authorizing the Adjutant General to waive certain eligibility

requirements upon receiving proof that a member's salary is negatively impacted by serving on active duty is stricken. Also stricken is the statement that payments will not be made directly to creditors.

Questions/requests for copies/comments concerning the proposed rulemaking until 1/31/05: Kevin C. Pennell, DMA, 1301 N. MacArthur Blvd., Springfield IL 62702, 217/761-3432, Fax 217/761-2603.

MEAT & POULTRY

The DEPARTMENT OF AGRICULTURE adopted a peremptory amendment for rules titled "Meat and Poultry Inspection Act" (8 Ill Adm Code 125), effective 12/6/04, to correct the Federal Register citation that appeared in a peremptory amendment that was published in the 12/3/04 issue of the *Illinois Register*. The only change between the 2 rulemakings shows the correct incorporation by reference at 69 FR 58799 rather than 69 FR 48799, as was originally published.

MOTOR FUEL

DOA also adopted an emergency amendment for rules titled "Motor Fuel Standards Act" (8 Ill Adm Code 850), effective 12/1/04, for a maximum of 150 days. An identical proposed rulemaking appears in this issue of the *Illinois Register*. The amendments postpone Illinois' adoption of the American Society for Testing and Materials (ASTM) diesel fuel lubricity requirement until 10/1/05. DOA states that the reason for the delay is that some pipeline companies will not allow a lubricity additive and, therefore, equipment to inject the additive must be installed at fuel terminals, thereby necessitating a delay in rule implementation. Oil refiners and fuel terminals are affected by these amendments.

Questions/requests for copies of the 3 DOA rulemakings above/comments concerning the DOA proposed rulemaking until 1/31/05: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217/785-4505.

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a CAAPP, the amendments specify that current emission reduction market system regulations will still apply to the pollution source. Small businesses and not-for-profit corporations located in the Chicago area that emit, or have the potential to emit, 25 tons/yr. or more of VOM or are required to obtain a CAAPP permit and have baseline or seasonal emissions of 10 tons/yr. will be affected by these rulemakings.

Questions/requests for copies/comments until 1/31/05: Dorothy Gunn, Clerk, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620 or John Knittle, 217/278-3111.

MEAT & POULTRY

The DEPARTMENT OF AGRICUL-

TURE proposed amendments for rules titled "Meat and Poultry Inspection Act" (8 Ill Adm Code 125) to update incorporations by reference of federal regulations to 2004 publications. The rulemaking also clarifies that minor changes in a licensee's work schedule must be submitted to the DOA supervisor rather than the regional administrator and strikes obsolete text concerning rates charged for inspection services rendered at times other than the regular work schedule. Those affected by this rulemaking include State-licensed meat and poultry establishments.

Questions/requests for copies/comments until 1/31/05: Linda Rhodes at the DOA address and telephone number above.

TOURISM & CONVENTIONS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed the repeal of "Local Tourism and Convention Bureau Program" (14 Ill Adm Code 550) and proposed a new Part of the same title and number. The proposed regulations allow organizations that have been promoting tourism for at least 2 years to seek entry into this program rather than limiting the program to organizations in existence since 1985. Also, the base year used for grant calculations is updated from 1998 to fiscal year 2005 and capped at \$720,000 in FY05 for bureaus outside Chicago. Audits are required for all grantees receiving more than \$500,000. Other regulations undergoing substantive change con-

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cern procurement standards, use of sponsorship funds for match, advertising restrictions, and report deadlines. Those affected by these 2 rulemakings include municipalities with State-funded convention and visitors bureaus.

Questions/requests for copies/comments until 1/31/05: Jolene Clarke, DCEO, 620 E. Adams St., Springfield IL 62701, 217/557-1820, Fax 217/782-0038, E-mail: jolene_clarke@commerce.state.il.us

🔑 CONVICTION INFORMATION

The ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY proposed an amendment for “Fees for Processing Requests for Conviction Information” (20 Ill Adm Code 1570) to increase the fee that criminal justice agencies other than the State Police may charge to process requests for conviction information from \$16 to \$24, beginning in calendar year 2005. Small businesses or not-for-profit corporations that request such assistance may be affected by this rulemaking.

Questions/requests for copies/comments until 1/31/05: Corey-Anne Gulkewicz, ICJIA, 120 S. Riverside Plaza, Ste. 1016, Chicago IL 60606-3997, 312/793-0891.

🔑 COAL MINING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments for the following 6 Parts: “General” (62 Ill Adm Code 1700); “Areas Designated by Act of Congress” (62 Ill Adm Code 1761); “Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations” (62 Ill Adm Code 1762); “Requirements for Coal Exploration” (62 Ill Adm Code 1772); “Requirements for Permits and Permit Processing” (62 Ill Adm Code 1773); and “Permanent Program Performance Standards—Underground Mining Operations” (62 Ill Adm Code 1817). The amendments for all the Parts update statutory or

code references. In addition, Part 1700 repeals the section related to the Surface Mining Advisory Council, and Part 1773 strikes the requirement that a proposed shadow area for a planned subsidence operation not be (1) within an area under study or in administrative proceedings under a petition nor (2) within an area designated unsuitable for mining or within an area subject to certain prohibitions. Further amendments to Part 1761 concern requests to conduct mining operations within 100' of a public road right-of-way. In such cases, an applicant may be required to submit the request in an application for a new or revised permit. DNR may then issue its decision concurrently with the permit decision or concurrently with a decision on an “insignificant revision” or “incidental boundary revision”. Those affected by these rulemakings include coal mine operators.

Questions/requests for copies/comments concerning the 6 rulemakings above until 1/31/05: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

HORSE RACING

The ILLINOIS RACING BOARD proposed an amendment for “Medication” (11 Ill Adm Code 603) to increase the maximum allowable intravenous dose of furosemide administered by a veterinarian during the pre-race period from 250 to 500 milligrams, with the test level not exceeding 100 nanograms per milliliter of serum or plasma. A first-time fine level of \$250 is added rather than the current written warning, and subsequent fine and suspension levels are modified. The rulemaking also decreases from 9 days to 7 the time that a horse placed on the furosemide list must wait following its certification date before participating in a qualifying race.

Questions/requests for copies/comments until 1/31/05: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments for “Pay Plan” (80 Ill Adm Code 310) to make numerous “housecleaning” and clarifying revisions in order to bring the Part up-to-date. Obsolete titles are stricken; in-between salary grade, alternative retirement formula, and maximum security rate designations are changed to reflect the most recent Departmental policies; and alphabetical, formatting, and nonsubstantive technical corrections are made. To make pay plan provisions easier to follow, position titles and corresponding pay grades are added to the section explaining the merit compensation system’s jurisdiction. Several agreements between the State and the American Federation of State, County, and Municipal Employees (AFSCME) that were entered into in the past but were not put into rule are incorporated by this rulemaking, including adding a graphic arts designer supervisor position, adding several technical and professional employee positions, and making related salary rate changes. Substantive revisions include adding contract-mandated, nine-month pay schedules for AFSCME-represented educators and providing members of the Teamsters Union who are employed at the Department of Natural Resources with the standard 2% salary increase effective 1/1/05. This DNR table also reflects current pay ranges that became effective 7/1/04. Also, concerning paraprofessional investigatory and law enforcement employees, an error in an earlier rulemaking is corrected by changing 7/1/05 salary increases to the correct effective date of 1/1/05.

Questions/requests for copies/comments until 1/31/05: Dawn DeFraties, DCMS, 503 Stratton Bldg., Springfield IL 62706, 217/524-8773, Fax 217/558-4497.

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Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's 1/11/05 meeting in Springfield.

DEPARTMENT OF EMPLOYMENT SECURITY

"Determination of Unemployment Contributions" (56 Ill Adm Code 2770) proposed 10/22/04 (28 Ill Reg 13883)

DEPARTMENT OF STATE POLICE

"Certification and Training of Electronic Criminal Surveillance Officers" (20 Ill Adm Code 1295) proposed 8/13/04 (28 Ill Reg 11692)

DEPARTMENT OF REVENUE

"Income Tax" (86 Ill Adm Code 100) proposed 9/17/04 (28 Ill Reg 12778)